

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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VIRGIN VALLEY WATER DISTRICT,)
Plaintiff,) 2:09-cv-00309-LRH-PAL
v.)
VANGUARD PIPING SYSTEMS) ORDER
(CANADA), INC.; et al.,)
Defendants.)

Before the court is defendants VG Pipe, LLC; Viega, LLC; and Viega NA, Inc.’s (collectively “defendants”) motion for partial summary judgment number 5 as to time-barred claims due to statutes of limitations. Doc. #131.¹ Plaintiff Virgin Valley Water District (“Virgin Valley”) filed an opposition (Doc. #148) to which defendants replied (Doc. #163).

I. Facts and Background

Virgin Valley is a political subdivision of the State of Nevada and is responsible for the care and maintenance of underground residential water service lines in and around Mesquite, Nevada. This action arises out of Virgin Valley's allegations that the high-density piping and tubing used in the construction of underground water service lines were defectively designed and/or manufactured by defendants.

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¹ Refers to the court's docket entry number.

II. Legal Standard

Summary judgment is appropriate only when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). In assessing a motion for summary judgment, the evidence, together with all inferences that can reasonably be drawn therefrom, must be read in the light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *County of Tuolumne v. Sonora Cnty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001).

The moving party bears the burden of informing the court of the basis for its motion, along with evidence showing the absence of any genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). On those issues for which it bears the burden of proof, the moving party must make a showing that is “sufficient for the court to hold that no reasonable trier of fact could find other than for the moving party.” *Calderone v. United States*, 799 F.2d 254, 259 (6th Cir. 1986); see also *Idema v. Dreamworks, Inc.*, 162 F. Supp. 2d 1129, 1141 (C.D. Cal. 2001).

To successfully rebut a motion for summary judgment, the non-moving party must point to facts supported by the record which demonstrate a genuine issue of material fact. *Reese v. Jefferson Sch. Dist. No. 14J*, 208 F.3d 736 (9th Cir. 2000). A “material fact” is a fact “that might affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Where reasonable minds could differ on the material facts at issue, summary judgment is not appropriate. *See v. Durang*, 711 F.2d 141, 143 (9th Cir. 1983). A dispute regarding a material fact is considered genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Liberty Lobby*, 477 U.S. at 248. The mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient to establish a genuine dispute; there must be evidence on which the jury could reasonably find for the plaintiff. *See id.* at 252.

III. Discussion

On February 13, 2009, Virgin Valley filed a complaint against defendants for damages resulting from the leak of defendants' manufactured polyethylene pipe. Doc. #1. During discovery, Virgin Valley retained expert Peter Badala ("Badala") to compute Virgin Valley's past damages. In his damage calculation, Badala included the cost for repairs of leaks beginning in June 30, 2004.

The applicable statutes of limitations for all of Virgin Valley's causes of action are four (4) years. *See* NRS 11.190(2)(c); NRS 104.2725; NRS 11.220. Virgin Valley filed its complaint on February 13, 2009. Thus, defendants argue that all claims for damages prior to February 13, 2005, are time-barred by the applicable statute of limitations and should be excluded from any past damage computations. *See* Doc. #131.

Generally, the statute of limitations begins to run when a party sustains an injury. *Petersen v. Bruen*, 792 P.2d 18, 20 (Nev. 1990). However, there is an exception to the general rule known as the “discovery rule.” *Id.* “Under the discovery rule, the statutory period of limitations is tolled until the injured party discovers or reasonably should have discovered facts supporting a cause of action.” *Id.*; see also, *Beazer Homes Nev., Inc. v. Eight Judicial Dist. Court*, 97 P.3d 1132, 1138 (Nev. 2004). In a products liability action, “[a] cause of action accrues once the plaintiff knows of the injury and the causal connection between the defendant’s product and that injury.” *Mack v. A.H. Robins Co., Inc.*, 573 F. Supp. 149, 154 (D. Ariz. 1983).

Here, Virgin Valley only alleges six repairs outside of the applicable statute of limitations that are included in Badala's past damages computation. Virgin Valley contends that these initial leaks were sporadic in nature and were throughout the entirety of its service lines; they were not isolated to specific subdivisions and they did not occur with increasing regularity. Further, Virgin Valley contends that the exact cause of the leaks was not readily apparent and that it had to investigate the leaks and pipe at issue to discover sufficient information to link the leaks to a manufacturing defect in defendants' pipe. *See Mack*, 573 F. Supp. At 154. Further, upon discovery

1 of a possible manufacturing defect, Virgin Valley sent a service complaint to defendants outlining
2 its findings in July 2005, barely a year after the first leak. Therefore, based on the record before the
3 court, and the pleadings and documents on file in this matter, the court finds that Virgin Valley has
4 sufficiently invoked the discovery rule to cover the repairs beginning in June 2004. Accordingly,
5 the court shall deny defendants' motion for partial summary judgment.

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7 IT IS THEREFORE ORDERED that defendants' partial motion for summary judgment
8 number 5 (Doc. #131) is DENIED.

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IT IS SO ORDERED.

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DATED this 12th day of January, 2011.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE

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